IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1950.

No. 189.

DAVID V. LANSDEN et al., Petitioners,

vs.

WILLIAM W. HART, as United States Attorney for the Eastern District of Illinois, et al., Respondents.

PETITION FOR REHEARING

Of Order Denying Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioners respectfully petition the Court to vacate the order entered on October 9, 1950, denying the petition for writ of certiorari, and move to grant said petition for said writ of certiorari as prayed therein.

Intervening circumstances of substantial or controlling effect and other substantial grounds available to petitioners although not previously presented are as follows:

I.

The significance of this case has been brought into sharper focus since petitioners filed their petition for writ of certiorari.

The establishment in 1947 of the area closed to the hunting of geese in Alexander County, Illinois, by Proclamation 2748, 12 F. R. 6521, was ostensibly done to hold down what the Fish and Wildlife Service in the Department of the Interior felt might have been an excessive annual kill of geese in such county.

In the years 1944 and 1945, the annual hunting regulations made no distinction between Alexander County and the rest of the State of Illinois, but by order of the Secretary of the Interior, acting on the advice of the Fish and Wildlife Service, the season in 1944 on geese in Alexander County was closed on November 17, 1944, after about twenty days of hunting, the kill then amounting to something in excess of 6,000 geese. 9 F. R. 13669.

In 1945 the season was similarly closed in Alexander County on November 28, 1945, after a few days hunting wherein less than 5,000 geese were killed. 10 F. R. 14527.

The method used to stop hunting in Alexander County in the years 1944 and 1945 has not been used since.

In 1946 the entire Mississippi Flyway was closed to the hunting of geese by Proclamation 2699, 11 F. R. 8707. Surprisingly enough, such closure of the Mississippi Flyway was not the result of the 1945 kill in Alexander County, but was made because of excessive kills in Wisconsin and Michigan. (Press Release, Fish and Wildlife Service, August, 1946.)

However, in 1949 over 30,000 geese were killed outside the closed area from the flock that winters in Alexander County. Instead of considering such kill to be excessive, responsible officials of the Fish and Wildlife Service at its public meetings held in 1950 expressly commented upon the wonderful kill of geese from such flock. (Proceedings, public waterfowl meetings, Hotel Peabody, Memphis, Tennessee, April, 1950, and Hotel Jefferson, St. Louis, Missouri, May, 1950.)

The ostensible reasons for the establishment of the closed area having been publicly repudiated, the closed area must have been based on something other than a concern over the possibility of an excessive kill of geese from the Horse Shoe Lake flock.

Since the filing of petitioners' application for writ of certiorari, the true reasons for the establishment of the closed area have been disclosed by Federal and State officials.

The closed area herein is still the only closed area where no Federal land ownership is involved. Herein private lands around a State preserve were closed. There is no Federal refuge in Alexander County (R. 5).

The closure in Alexander County is the first of a contemplated series of closures over all the United States that will include private lands and public shooting areas owned and operated by State Game Departments. (Proceedings, annual conference International Association of Game, Fish and Conservation Commissioners, Memphis, Tennessee, September 15, 1950, statement of Dr. Clarence E. Cottam, Assistant Director of the Fish and Wildlife Service.)

If the two opinions of the Court of Appeals for the Seventh Circuit in this case, 168 F. 2d 409 and 180 F. 2d 679, both stand unchanged, this case has become the legal

precedent for establishing closed areas in any state in the United States wherever and whenever the Fish and Wildlife Service, justifiably or unjustifiably, feels that hunters are too successful in their hunting of waterfowl.

Another reason for the closure in Alexander County is really vicious. The Horse Shoe Lake State Game preserve has been since 1942 and is to be enlarged by purchase or condemnation by the State of Illinois over a period of years. Seventy-five per cent of funds for such enlargement is furnished by the Federal Government from the Federal Aid to Wildlife Restoration fund (Pittman-Robertson Act), 16 U. S. C., Secs. 669-669j. Officials of the Fish and Wildlife Service and the Conservation Department of the State of Illinois working together now state in substance to petitioners as follows: "We closed you down. We're going to keep you closed down. That will destroy permanently the value of your right to use your land for hunting. Then we won't have to pay you anything for the value of your hunting rights although your land's greatest value is its hunting potential."

A totalitarian technique is thus being used openly in these United States to compel petitioners to give up their lands at the government's depreciated figure.

II.

Altough the Court of Appeals found in its second opinion, 180 F. 2d 679, that petitioners had property rights sufficient to seek injunctive relief in the Federal Court, it forever denied to petitioners any protection for such rights.

The Court of Appeals at 180 F. 2d 679 at 684 states:

> "As the act itself is constitutional and as the regulations for the 1947 season issued thereunder (Proclamation 2748) are in all respects legal and valid, it

follows that the plaintiffs **cannot possibly state a claim under any theory of law upon which relief can be granted.**" (Emphasis supplied.)

An analysis of the opinion shows that the Court of Appeals assumed the result it reached without having any evidentiary facts before it.

What remedy, if any, is left to petitioners?

III.

The availability and extent of judicial review of administrative action are live issues of law today both in Federal and State Courts.

Pending before this Court are, among others, three cases in which certiorari has been granted. **National Council of American-Soviet Friendship et al. v. McGrath**, October Term, 1950, No. 7 (opinion of Court of Appeals for the District of Columbia not reported); **Joint Anti-Fascist Refugee Committee v. McGrath**, October Term, 1950, No. 8 (opinion below, 177 F. 2d 79), and **International Workers Order, Inc., et al., v. McGrath**, October Term, 1950, No. 71 (opinion below, 182 F. 2d 368).

The cited cases involve in part the question of judicial review of the determination by the Attorney General that an organization is subversive, pursuant to powers granted him by Executive Orders.

In this case there are no allegedly Communist or Communist Front organizations involved. Petitioners are just plain American citizens who seek judicial review of a Presidential Proclamation which closed their lands to the hunting of wild geese.

If judicial review in the three cited cases is upheld, and is denied in this case, as it was by the Court of Appeals for the Seventh Circuit, the anomalous situation is pre-

sented that an organization labelled subversive, taking its orders from Moscow, can use our judicial process to gain a hearing on the merits of its case while American citizens are denied the same right.

Petitioners rightfully feel that the supervisory powers of the judiciary should be as much available to them as to allegedly subversive organizations.

For this reason, this petition for rehearing is filed to prevent extinction by lapse of time of petitioners' rights in the event any of the three cited cases hold in favor of judicial review or establish a precedent applicable to this case.

CONCLUSION.

Wherefore, for the reasons herein stated and for all of the reasons set forth in the petition for writ of certiorari and brief in support thereof, petitioners pray the Court to grant a rehearing hereon, to vacate the order entered on October 9, 1950, and to grant the petition for writ of certiorari.

Respectfully submitted,

DAVID V. LANSDEN,
216 Seventh Street,
Cairo, Illinois,
Pro Se.

ROBERT L. LANSDEN,
216 Seventh Street,
Cairo, Illinois,
Pro Se.

JOHN F. DONELAN,
Munsey Building,
Washington, D. C.,

ROBERT L. LANSDEN,
216 Seventh Street,
Cairo, Illinois,

Counsel for Petitioners Not Appearing Pro Se.

Certificate of Counsel.

We, David V. Lansden, one of the petitioners, Robert L. Lansden, one of the petitioners and counsel for other petitioners, and John F. Donelan, counsel for other petitioners, hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

We also certify that said petition is restricted to the grounds specified in Rule 33, as amended, of the Rules of this Court.

David V. Lansden,

Robert L. Lansden,

John F. Donelan.